



File No. O. Foreigners/
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Opinions. Under the Indian
Foreigners Act, 1864—

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2. Pl. see R.^{L.}A's opinions No. 4583 (slip P), and No. 2118 (slip I) dated 26-2-1940. Uttamchand Hemochand was first detained in prison for breach of the orders issued by Government under section 3 of the Foreigners Act, 1864, (P. & S.D. File S. 43/1305 p.23). As he was suffering from anaemia, Government cancelled the orders of detention dated 9-11-1937) and issued a license to him for staying in Bombay City, on condition that he did not engage in any unlawful activity and behaved himself (ibid, P.247 -249). As he did not observe these conditions, the license issued to him was cancelled and the Commissioner of Police was directed to arrest and keep him in custody if he refused to leave British India and to report to Government for issue of deportation orders. (Ibid p. 287). The Commr. has now reported that Uttamchand is not willing to remove himself from British India, and therefore he should be awarded one years' detention in prison. P. & S.D. considers that deportation orders should first be issued against him and that if after he is removed he returns to British India, action to detain him should then be taken. The R.L.A. is requested to advise the correct course to be followed in this case.

3. Under section 3 of the Foreigners Act, 1864, the Central Government may, by writing, order any foreigner to remove himself from British India, or to remove himself therefrom by a particular route to be specified in the order. Section 4 provides inter alia that if any foreigner ordered to remove himself from British India, or ordered to remove himself

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~~xxx~~ therefrom by a particular route shall will-fully return thereto without a licence in writing granted by the Central Government such foreigner may be apprehended and detained in safe custody until he shall be discharged therefrom by order of the Central Government upon such terms and conditions they deem sufficient. By Govt. of ~~Indi~~ India Notification H.D.(Pol), No. 51/12/36, dated 29th March 1938 the functions of the Central Government under sections 3, 3A and 4 of the Foreigners Act have been entrusted to the Provincial Government. In the present case orders under section 3 for deportation of Uttamchand Hemchand were issued on 10-6-1935 (P.& S.D. file p.17) but since he returned to British India in defiance of the order s, he was on 15-8-1935 ordered to be apprehended and detained in Bijapur Jail under section 4(Ibid, p.65). By G.R.P. & S.D. No.43/1305, dated 20-3-1936 the order of detention was cancelled on condition that he removed himself under police escort (Ibid p. 145). He again returned in contravention of the deportation Order and on the recommendation of the Commr. of Police was granted a license to stay in British India for a month (which was further extended). (Ibid p.175 and p. 181.). As he was unwilling to remove himself in pursuance of orders contained in G.R.P.&S.D. 543/1305 dated 9-11-37, he was again arrested and detained in prison (Ibid p.193-195). On 14-3-1940 the order of ~~det~~ detention was cancelled and a license was granted (pp.247-249). He was again granted a license on 24-3-41 which was cancelled on 20th March 1943 (Ibid p.289). It will thus be seen that the ~~ex~~ deportation order made under section 3 on ~~10~~ 10-6-1935 was never cancelled, but Govt. merely cancelled orders of detention from time to time and issued licences for his stay in British India on certain conditions.

As held by the M.L.A. in para. 4 of his opinion No. 6271, dated 6-8-1938, ~~dx~~ the deportation order in this case ought to have been cancelled before the licenses were granted. Although this was not done, it is still doubtful whether the detention order issued in 1935 can be said to have been in a state of suspension during the interval and revived as soon as the license was cancelled on 20-3-1943. It appears from the above said opinion that on the expiry of the license the proper course would be to issue fresh orders under section 4 for removal of the foreigner from British India and then order his apprehension and detention if he returned in defiance of that order. The view taken by P. & S.D. at p.4 ante appears to be correct.

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The view taken by P. & S. D. at page 4 ante appears to be correct. The licence to stay in Bombay in effect cancelled the ~~ma~~ original deportation order. Consequently it would appear necessary ex ~~ma~~jore cautela to pass a fresh order of ~~d~~deportation.

O.C. sd/-
30/4

Remembrance of Legal Affairs.

U. R. to P. & S. D., No. 3195, dated 30-4-1943

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Onest Gurunath Venkatesh Kulkarni, a subject of the Sangli State (see Nominal Roll) was admitted into the mental Hospital, Dharwar, on 23-8-1942, in pursuance of the reception order made by the Sub Divisional Magistrate F.C., Belgaum City, under section 14 of the Indian Lunacy Act, 1912. In his letter No. 1407 dated 8-9-1942, the Superintendent, Mental Hospital, Dharwar, requested the Surgeon General with the Government of Bombay that the State concerned be moved to pay the maintenance charges of the lunatic, G.V. Kulkarni, for the full period of his stay in the Hospital at the rate of Rs. 1-2-0 per diem. The Resident for Kolhapur and the Deccan States in his letter No. G.21/41, dated 26-10-1942, however, informed Government that no reciprocal arrangement existed between the Sangli State and the Government of Bombay for payment of maintenance charges of insanes. As the Sangli Darbar is unwilling to meet the maintenance charges of the lunatic in question, the Surgeon General suggests that the lunatic should be deported to Sangli. G.D. appears to agree with the Surgeon General that if the Indian State concerned refuses to pay the maintenance charges of the lunatic or ~~some~~ accept his transfer, the lunatic belonging to such State should be deported. It is further stated that no difficulty is likely to arise on account ^{of} refusal of the Board of Visitors to discharge such lunatics.

2. The question raised for R.L.A.'s consideration is whether there is any legal objection to the issue of deportation order under section 3 of the foreigners Act, 1864 against a lunatic who is a subject of an Indian State.

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3. The Foreigners Act, 1864, provides for the expulsion of a foreigner by making a an order under section 3. If he does not comply ^{with} that order he ~~may~~ may be arrested and detained, and the Central Government may cause him to be removed from British India. A foreigner, who is a lunatic, would presumably not be able to understand such an order and, therefore, there would be no question of his complying or not complying with the order. Further, if he is an inmate of an asylum, he would not have an opportunity of complying. Government's order under section 3 of the Foreigners Act would consequently be ^{of} doubtful validity and further action under section 4 or 17 would be equally open to ~~xxx~~ challenges. Moreover lunatics are recognised by law as persons deserving special care and consideration, and it seems hardly proper to apply even to foreign lunatics the harsh provisions of an Act which is usually reserved for criminals and undesirables. The Foreigners Act therefore can not with any legal propriety be resorted to for deporting lunatics.

Sd/- P.N.M.
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Remembrancer of Legal Affairs.

U.R. to G.D. No. 8789 dated the 29th November 1943.

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